

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

DEVIN ESPINOZA,  Petitioner,   vs.   UNITED STATES OF AMERICA,   Respondent.	MEMORANDUM DECISION AND ORDER DISMISSING CASE    Case No. 2:09-CV-479 TS Criminal Case No. 2:00-CR-56 TS
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In the present case, Petitioner Devin Espinoza moves for an order amending his sentence to have approximately 26 months of his 200-month sentence run concurrently with his state parole violation term. He styled his request as an “Independent Action in Equity for an Amended Concurrent Sentence” under Fed. R. Civ. P. 60(b). According to Petitioner, the Bureau of Prisons (BOP) has denied him credit against his federal sentence for those months because he has already received credit for those months against his state parole violation term. Because the present Motion seeks relief in the form of correcting or amending his sentence, the Clerk of Court construed it as Motion to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody pursuant to 28 U.S.C. § 2255.

Petitioner has recently moved to dismiss this motion, conceding that this court lacks jurisdiction to overturn or regulate the BOP's calculation of his sentence.<sup>1</sup> Because Petitioner filed his request to dismiss this action in his underlying criminal case, the Court will direct that a copy be filed in the present case to clarify the record.

Based on Petitioner's Motion to Dismiss, it is therefore

ORDERED that Defendant's Independent Action in Equity for an Amended Concurrent Sentence (Docket No. 1) is construed a Motion under 28 U.S.C. § 2255 and Petitioner's Motion to Dismiss (Docket No. 2) is GRANTED and this case DISMISSED.

DATED June 16, 2010.

BY THE COURT:

  
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TED STEWART  
United States District Judge

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<sup>1</sup>Docket No. 162 in case No. 2:00-CR-56 TS.